

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WHITNEY SPICHER,

Plaintiff,

v.

AMERICAN FAMILY MUTUAL
INSURANCE COMPANY, S.I. and
JOHN and JANE DOES 1-10,

Defendants.

CASE NO. C22-1116 MJP

ORDER DENYING DEFENDANT'S
MOTION TO BIFURCATE TRIAL

This matter comes before the Court on Defendant American Family Mutual Insurance Company's Motion to Bifurcate Trial. (Dkt. No. 48.) Having reviewed the Motion, Plaintiff's Opposition (Dkt. No. 55), the Reply (Dkt. No. 58), and all supporting materials, the Court DENIES the Motion.

Defendant asks the Court to bifurcate trial into two phases: (1) one phase limited to Plaintiff's claim for UIM benefits; and (2) one phase limited to Plaintiff's bad faith/extra-contractual claims. Defendant claims that bifurcation is proper under Federal Rule of Civil

1 Procedure 42(b) to avoid the jury from considering prejudicial evidence about Plaintiff's bad
2 faith/extra-contractual claims in the context of her UIM claim and becoming confused.
3 Defendant also argues that a phased trial will conserve judicial resources by potentially avoiding
4 a trial on the bad faith/extra-contractual claims altogether.

5 District courts enjoy wide latitude in choosing how to conduct trials, including whether to
6 bifurcate. Estate of Diaz v. City of Anaheim, 840 F.3d 592, 601 (9th Cir. 2016). Federal Rule of
7 Civil Procedure 42(b) permits courts to order a separate trial of separate claims or issues “[f]or
8 convenience, to avoid prejudice, or to expedite and economize.” District courts consider factors
9 including whether bifurcation would increase judicial economy, reduce the risk of jury
10 confusion, and avoid prejudice to the parties. See Hirst v. Gertzen, 676 F.2d 1252, 1261 (9th Cir.
11 1982). The party moving for bifurcation has the burden to show it is appropriate. See Wesco Ins.
12 Co. v. Tauler Smith LLP, 2020 WL 4369496, at *1 (C.D. Cal. Mar. 10, 2020).

13 The Court is not persuaded by Defendant's arguments in support of bifurcation.
14 Defendant has not demonstrated that it will be prejudiced if this action proceeds in a single,
15 unphased trial or that jurors will be confused. The Court frequently tries UIM and bad faith
16 claims in a single trial and minimizes any prejudice or confusion by specifically instructing the
17 jury on each claim individually and providing a verdict form that requires the plaintiff to prove
18 the UIM claim before allowing for any finding of liability for bad faith/extra-contractual claims.
19 See, e.g., Gamble v. State Farm Mut. Auto. Ins. Co., C19-5956 MJP (W.D. Wash.); Hopkins v.
20 Integon Gen. Ins. Co., C18-1723 MJP (W.D. Wash.). The single Washington case on which
21 Defendant relies notes only that bifurcation is often granted—not that it is mandatory under
22 Washington law. See Fortson-Kemmerer v. Allstate Ins. Co., 198 Wn. App. 387, 390–91 (2017),
23 as amended on denial of reconsideration (June 15, 2017) (noting only that “insurers often
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1 persuade courts to bifurcate not only trial, but also discovery”). The Court here presumes that
2 jurors are able to and will follow its instructions. The Court’s experience trying these kinds of
3 claims in a single trial suggests that jurors are quite capable of doing so, and Defendant identifies
4 no basis to assume otherwise. The Court therefore finds no cognizable risk of prejudice through a
5 non-phased trial.

6 Even if Defendant had shown some prejudice through an unphased trial, it would be
7 wasteful to phase this action. Phasing would interject complexity, burden the jury, and lead to
8 some duplication and delay. The only scenario in which party and court resources might be
9 conserved is if Defendant succeeds in defeating Plaintiff’s UIM claim. It remains highly
10 speculative whether this might occur, and the Court is unwilling act on that possibility.

11 Having considered all of the relevant factors under Rule 42(b), the Court is unconvinced
12 that bifurcation is proper. Any risk of prejudice is outweighed by the substantial possibility that
13 phasing the trial would waste judicial and party resources. The Court therefore DENIES the
14 Motion.

15 The clerk is ordered to provide copies of this order to all counsel.

16 Dated August 15, 2023.

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18 Marsha J. Pechman
19 United States Senior District Judge
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